



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.7, 1.10, 1.11, and 1.13 with its Comment [9]. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 95-5
July 14, 1995**

Topic: Conflict of Interest; Direct Adversity; Public Body; Imputed Disqualification.

Digest: It is not necessarily improper for a lawyer whose firm represents a city in defense of a variety of civil matters to undertake representation in unrelated matters of clients charged with violations of the Human Rights Ordinance of the city before its Human Rights Commission if both clients consent after full disclosure.

Any client of any lawyer in a law firm or of the firm itself is a client of every lawyer in the firm for the purpose of conflict of interest analysis.

Representation of a public body client in defense of various civil matters is directly adverse to the interests of that client in representation of another client before the Human Rights Commission, a creature of the city, empowered to enforce the city's Human Rights Ordinance.

Ref.: Illinois Rules of Professional Conduct, Rules 1.7, 1.10(a).
ISBA Opinion Nos. 86-4, 90-5, 90-17, 91-22 and 94-21.

FACTS

The inquirer's firm represents a public body, a city, in defense of a variety of civil matters including civil rights and related employment law claims, workers compensation claims and general liability claims. Some of the work is assigned by companies which insure the city with the approval of the City Attorney's Office. The inquirer has received inquiries regarding his ability, as a partner in the firm, to represent clients before the city Human Relations Commission, a creature of the city, empowered to enforce the Human Rights Ordinance of the city. By ordinance and custom, when complaints are brought before the Human Rights Commission, the City Attorney's Office "prosecutes" those complaints as they might violations of other city ordinances before administrative bodies or the courts.

QUESTIONS

1. Is a partner in a law firm potentially prohibited from representing a client whose position may be directly adverse to another client of the firm?
2. Is there a critical distinction for conflict of interest purposes between representing a client before a municipal administrative/fact-finding commission of a public body and representing that public body itself as a named "party in interest" in other civil matters?
3. Is it professionally improper for a lawyer whose firm represents a city in defense of a variety of civil matters to undertake representation of clients charged with violations of the city's Human Rights Ordinance before the city's Commission?

OPINION

Rule 1.10 of the Illinois Rules of Professional Conduct entitled "Imputed Disqualification: General Rule" provides in pertinent part as follows:

- (a) No lawyer associated with a firm shall represent a client when the lawyer knows or reasonably should know that another lawyer associated with that firm would be prohibited from doing so by Rules 1.7, 1.8(c) or 1.9, except as permitted by Rules 1.10(b), (c) or (d), or by Rule 1.11 or Rule 1.12.

Rule 1.7 of the Illinois Rules of Professional Conduct states:

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
 1. The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
 2. Each client consents after disclosure.
- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
 1. The lawyer reasonably believes the representation will not be adversely affected; and
 2. The client consents after disclosure.
- (c) When representation of multiple clients in a single matter is undertaken, the disclosure shall include explanation of the implication of the common representation and the advantages and risks involved.

The Committee's recent ISBA Opinion No. 94-21 is virtually dispositive of the issues raised in the instant inquiry, with a few exceptions. That opinion held that it was not per se improper for a lawyer to sue a current client (a public body) in an unrelated matter if both clients consent after full disclosure and established an objective, not subjective, standard in determining whether an attorney "reasonably believes" his dual representation will not adversely affect his relationships.

Rule 1.10 unequivocally imputes the disqualification of any lawyer associated with the firm to all other lawyers in the firm, not just partners, as a general rule, the stated exceptions not relevant here. See ISBA Opinion Nos. 90-17 and 90-5. Thus, any client of any lawyer within the firm or of the firm itself must be treated as a client of the inquiring lawyer for a conflict of interest analysis. In the instant inquiry, the inquiring lawyer must treat the city as his client, even though the lawyer may have had no personal or professional contact with or responsibilities for any of the city matters handled by the firm.

Rule 1.7(a) applies where there is direct adversity and requires that each client consent after full disclosure; Rule 1.7(b) applies where there may be a material limitation in representation of a client and that client must consent after full disclosure. See ISBA Opinion No. 91-22.

Thus, the first step in this conflict of interest analysis is to determine whether there is direct adversity with a current client of the firm or whether there is a material limitation by the lawyer's responsibilities to another client, a third person or the lawyer's own interests.

There is no definition of the phrase "directly adverse" contained in the Rules of Professional Conduct or, for that matter, in prior ISBA Opinions. This Committee has repeatedly had the opportunity to review potential conflict of interest factual scenarios involving public officials, such as full or part-time city or village prosecutors, municipal attorneys, public defenders, assistant state's attorneys or assistant attorneys general, seeking to represent other clients in various civil or criminal cases.

In ISBA Opinion No. 91-1, the inquiry involved a "quasi-official" position not previously addressed involving part-time, contract basis employment by the State's Attorneys Appellate Prosecutor's Office to write appellate briefs. The inquirer did criminal defense work in another county. As noted in that opinion, where ongoing attorney-client obligations arise from public office an attorney is generally prohibited from accepting cases against that public body client. The exceptions to that general rule have been found where the scope of the representation of the public is limited or unrelated by subject matter, geography or some other basis. Given such an exception, the apparent conflict is then cured, mitigated or eliminated by full disclosure and consent.

This Committee is of the opinion that the Human Rights Commission in the given fact situation is an agency of the city empowered to enforce the Human Rights Ordinance of the city and, therefore, any suggestion that the city is not a "party" or "client" interested in or affected by the proceedings is specious. Whether a client is a named party, party in interest or real party in interest in a legal context is irrelevant. The issue is whether the interests of that client are directly adverse to the proposed representation.

In ISBA Opinion No. 86-4, affirmed in January, 1991, the inquiring attorney's firm included

partners and associates employed by a county as Special Assistant State's Attorneys whose work was limited to juvenile cases involving abuse and neglect proceedings. The Committee opined that lawyers of the firm could act as criminal defense lawyers in the same county where the nature of the latter's work was unrelated (non-juvenile criminal cases), contingent upon the consent of both clients after full disclosure. While admittedly there was no discussion in the opinion as to whether the juvenile abuse and neglect proceedings were before a court, a hearing board, a commission or some other tribunal, the fact remains that underlying the decision is direct adversity between the interests of the respective clients.

Accordingly, the Committee believes that the proposed representation in the instant inquiry represents a Rule 1.7(a) "direct adversity" and finds no merit to any distinction between the interests of a public body and one of its commissions, agencies, hearing boards, tribunals or other organizational units.

That issue having been resolved, ISBA Opinion No. 94-21 is dispositive. Utilizing the objective, reasonably prudent and competent lawyer standard, the Committee is unable to state that the proposed representation in an apparent unrelated matter is necessarily improper or violative of Rule 1.7(a), assuming that both clients consent after full disclosure. ISBA Opinion No. 86-4, as affirmed in ISBA Opinion No. 94-21, found that a government entity can give its consent after full disclosure to dual representation.

In reaching this decision, the Committee has assumed that the stated civil rights and related employment law claims handled by the firm are unrelated to the Human Rights Ordinance. Inasmuch as we previously held in ISBA Opinion No. 94-21 that there must be full and ongoing disclosure to both clients, the attorney must be vigilant and sensitive to any overlapping of issues.

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